

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAMIN R. LAWSON,
Appellant,
vs.

CALIFORNIA ADULT AUTHORITY,
AGENTS, and WALTER DUNBAR,
Director of the Department
of Corrections, et al.,

Appellees.

APPELLEES' BRIEF

THOMAS C. LYNCH, Attorney General
of the State of California

DERALD E. GRANBERG
Deputy Attorney General

WILLIAM D. STEIN
Deputy Attorney General

6000 State Building
San Francisco, California 94102
Telephone: 557-2847

WM. B. LUCK CLERK

Attorneys for Appellees

FILED

SEP 5 1967

SEP 15 1977

TABLE OF CONTENTS

	<u>Page</u>
JURISDICTION	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	2
SUMMARY OF APPELLEES' ARGUMENT	4
ARGUMENT	
I. APPELLANT'S COMPLAINT WAS PROPERLY DISMISSED BY THE DISTRICT COURT PURSUANT TO RULE 12(b)(6).	4
II. APPELLANT'S COMPLAINT WAS PROPERLY DISMISSED BY THE DISTRICT COURT PURSUANT TO 28 U.S.C. 1915(d)	5
CONCLUSION	6

TABLE OF CASES

	<u>Page</u>
<u>Caviness v. Somers</u> 235 F.2d 455 (4th Cir. 1956)	6
<u>In re Costello</u> 262 F.2d 214 (9th Cir. 1959)	6
<u>In re McLain</u> 55 Cal.2d 78 (1960)	5
<u>Radford v. Lefkowitz</u> 240 F.Supp. 969 (S.D.N.Y. 1965)	5
<u>Shobe v. California</u> 362 F.2d 214 (9th Cir. 1959)	6
<u>Truitt v. Illinois</u> 278 F.2d 819 (7th Cir. 1960), <u>cert. denied</u> , 364 U.S. 866	5
<u>Weller v. Dickson</u> 314 F.2d 598 (9th Cir. 1963)	6

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BENJAMIN R. LAWSON,
Appellant,
vs.
CALIFORNIA ADULT AUTHORITY,
AGENTS, and WALTER DUNBAR,
Director of the Department
of Corrections, et al.,
Appellees.

APPELLEES' BRIEF

JURISDICTION

The order of the United States District Court for the Northern District of California dismissing plaintiff's complaint, in the proceeding entitled "Lawson v. California Adult Authority, et al.," No. 45898, was issued March 17, 1967. Appellant's notice of appeal and affidavit to proceed without prepayment of costs was received by the District Court on April 6th and his request was granted on April 19, 1967. Appellant seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. section 1219 and 28 U.S.C. section 1298, he undoubtedly means Title 28 U.S.C. sections 1915, 1291.

STATEMENT OF THE CASE

Appellant invoked the jurisdiction of the District

Court pursuant to 42 U.S.C. section 1989 and 42 U.S.C. section 1983 (Civil Rights Act of 1964) and prayed that court to issue warrants for the arrest of the named defendants.

Appellant alleged that he had completed his term of imprisonment and was being unlawfully restrained in the state prison at San Quentin, California.

Appellee filed a motion to dismiss pursuant to Rule 12(b)(6) of the Rules of Civil Procedure upon the ground that the complaint failed to state a cause of action upon which relief could be granted and pursuant to 28 U.S.C. section 1915(d) in that the complaint was frivolous and malicious. Appellant filed points and authorities in opposition to our motion which was heard by the Honorable Albert C. Wollenberg on March 13, 1967.

The District Court granted appellees' motion to dismiss appellant's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and Title 28 U.S.C. section 1915(d) on March 17, 1967.

STATEMENT OF FACTS

Appellant's complaint alleged that the members of the California Adult Authority had conspired to deprive him of the processes of court, due process, equal protection, had kidnapped and imprisoned him in excess of the lawful maximum time prescribed by law.

See Report of Adult Authority, Exhibit "J."

SUMMARY OF APPELLEES' ARGUMENT

1. Appellant's complaint was properly dismissed by the District Court.

(a) Pursuant to Rule 12(b)(6)

(b) Pursuant to 28 U.S.C. section 1915(d).

ARGUMENT

I.

APPELLANT'S COMPLAINT WAS PROPERLY
DISMISSED BY THE DISTRICT COURT
PURSUANT TO RULE 12(b)(6).

Rule 12(b)(6) provides in pertinent part that the defendant may move to dismiss the plaintiff's complaint when such complaint fails to state a claim upon which relief can be granted. It is clear from the face of appellant's complaint that the District Court was without power to grant the relief which appellant sought.

Appellant based his complaint upon 42 U.S.C. section 1989 and "the Civil Rights Act of 1964" (42 U.S.C.A. 1983). His complaint was entitled "Petition for Writ of Quo Warranto" and sought to have the District Court issue warrants for the arrest of the named defendants. It is axiomatic that the District Court does not have the authority under the Civil Rights Act (42 U.S.C.A. § 1983) to issue warrants of arrest for named defendants. 42 U.S.C. section 1989 is manifestly inapplicable.

In addition, appellant did not allege facts which, even remotely, could give rise to a federal cause of action: kidnapping, as appellant points out, is a violation of California Penal Code section 207. The Civil Rights Act does not create a cause of action for kidnapping unless it be in pursuance of a systematic policy of discrimination against a class or group of citizens. See Radford v. Lefkowitz, 240 F.Supp. 969, 977 (S.D.N.Y. 1965); accord Truitt v. Illinois, 278 F.2d 819, 820 (7th Cir. 1960), cert. denied, 364 U.S. 866.

II.

APPELLANT'S COMPLAINT WAS PROPERLY
DISMISSED BY THE DISTRICT COURT
PURSUANT TO 28 U.S.C. 1915(d).

Title 28, United States Code, section 1915, provides in pertinent part that the District Court in proceedings in forma pauperis may dismiss the case if satisfied that the action is frivolous or malicious. Appellees submit that a reading of appellant's complaint and an examination of the exhibits filed with the District Court demonstrate that appellant's action is not only malicious but indeed no factual basis for the instant complaint exists.

The setting by the Adult Authority of appellant's term at 12 years was of course tentative and subject to change for cause. See In re McLain, 55 Cal.2d 78, 89 (1960). The effect of the suspension of September 23, 1965, was to refix appellant's term at the maximum, i.e.,

life. See In re Costello, 262 F.2d 214, 215 (9th Cir. 1959). Appellant was at all times subject to the jurisdiction of the California Adult Authority which revoked his parole for cause. Thus, he is presently properly imprisoned in the state prison at San Quentin, California.

Refusal of the District Court to allow state prisoners to proceed under the Civil Rights Act in forma pauperis is a matter within that Court's discretion. See Shobe v. California, 362 F.2d 545 (9th Cir. 1966); Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963) and the dismissal of appellant's complaint cannot be reversed without showing that the district court abused its discretion. Caviness v. Somers, 235 F.2d 455 (4th Cir. 1956).

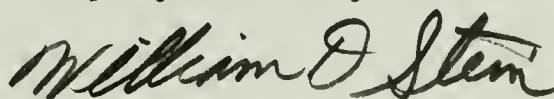
CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the District Court dismissing appellant's complaint should be affirmed.

DATED: August 28, 1967

THOMAS C. LYNCH, Attorney General
of the State of California

DERALD E. GRANBERG
Deputy Attorney General



WILLIAM D. STEIN
Deputy Attorney General

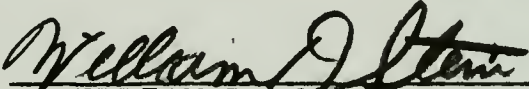
Attorneys for Appellees

WDS:lp
24CRSF
67-89

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

DATED: August 28, 1967



WILLIAM D. STEIN
Deputy Attorney General

